

From: [Patricia Butler](#)
To: [Waage, Melissa](#)
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August 1, 2014

News Coverage

Senate Democrats Challenge Water Rule, Congressional Quarterly, (see below), 08/01/14. Count more than a dozen Senate Democrats among those unhappy with the manner in which EPA has handled the so-called Waters of the United States, or WOTUS, proposal, which is designed to clarify the reach of the Clean Water Act ([PL 95-217](#)). Led by Senate Agriculture Chairwoman [Debbie Stabenow](#), D-Mich., 13 Democrats late Thursday urged the Obama administration to conduct additional outreach on the proposed rule and an accompanying guidance.

Latinos Back Rule, Politico/Morning Energy, 08/01/14. 28 Latino organizations wrote to EPA yesterday in support of the rule. "Protecting water supplies from pollution is critical to the health of Latino families, as well as our economy and environment," wrote the Hispanic Access Foundation, the National Hispanic Environmental Council and others: <http://bit.ly/1IgNh4g>

EPA water office left rudderless by Senate inaction, E&E News, (see below), 07/31/14. In this case, a vote on Kopocis' nomination -- should one ever happen -- would be portrayed as a proxy for EPA's controversial proposed rule to define which streams and wetlands receive automatic protection under the Clean Water Act. Kopocis has been heavily involved in crafting the rule in his current role as senior adviser at EPA, and he previously served as senior counsel for the House Transportation and Infrastructure Committee at a time when its then-chairman, Jim Oberstar (D-Minn.), attempted to make similar jurisdictional changes legislatively.

Stabenow Calls on EPA, Army Corps for More Info on Waters of the U.S. Rule, Farm Futures, 08/01/14. Sen. Debbie Stabenow, D-Mich., chairwoman of the Senate Committee on Ag, said Thursday that farmers need more clarity on the U.S. EPA and Army Corps of Engineer's proposed [Waters of the United States definition](#). The clarity, a letter Stabenow and 12 other Senators sent to the EPA and Army Corps said, would help farmers make sure the "waters" rule doesn't have unintended effects on agriculture and on conservation efforts.

Farmers Riled Up About Proposed EPA Water Rule, New Hampshire Public Radio, 07/31/14. The U.S. Environmental Protection Agency recently released proposed revisions to the Clean Water Act. The agency says the new rule is designed to clarify the protections for the nation's streams and wetlands. But, as reporter Chris Lehman of [Here & Now](#) contributor Northwest News Network discovered, some farmers believe the new rule would subject them to unnecessary and costly changes.

Ag leaders express concerns over proposal from EPA, The Bismarck (ND) Tribune, 08/01/14. Agriculture commodity group leaders raised concerns over drainage ditches being federally regulated and increased paperwork for farm employee safety requirements. One of those issues the commodity groups are worried about is proposed expansion of the EPA's definition of federal waters to include tributaries. Because of numerous wetlands and aquifers in the state, they are worried "prairie potholes" and other small water bodies on agricultural land may be added to federal oversight.

Meeting to Focus on EPA Rule, Lincoln Trail Publishing/Casey, IL, 07/31/14. The Environmental Protection Agency (EPA) is at it again. A new proposed rule on Waters of the United States (WOTUS) is another grab at regulating agriculture. Currently, farmers must abide by the Clean Water Act in regards to "navigable waters," but this will expand EPA's regulatory reach to ditches, remote "waters" and ephemeral drains where water moves across farm fields during down pours. If the EPA is allowed to expand its authority over small issues like ditches, only imagine what's next.

Opinion

We need to improve Clean Water Act, not abandon it, The (Durham, NC) Herald Sun, (op-ed), 07/31/14. Steve Graf: The Clean Water Act is not a "government power grab" as some short-sighted folks would have you believe. It is the only way we, as a society, have of limiting our impact on the land and water. Is it perfect? I am sure not. But it is the only tool we have to protect and enhance our aquatic environment. We need to use it, and improve it. Not abandon it. And we need to hold our politicians accountable to enforce it. Steve Graf is a subsistence farmer, traditional bowhunter and retired NASA engineer who lives in Cedar Grove.

EPA and Big Government Are Coming for Your Land, (Butte) Montana Standard, (letter to the editor), 08/01/14. Steel Anderson: The arm of Big Brother continues grow bigger and bigger every day. The EPA is currently undergoing a revision to the Clean Water Act which could allow them to control temporary bodies of water right down to puddles after a rainstorm and ultimately your land. Almost all agricultural activities would touch a "water of the United States" under the expanded definition. This change in policy will be detrimental to the Montana's economy, considering that agriculture is this state's top industry. Steel Anderson lives in Livingston.

EPA's attempt to regulate agricultural storm water runoff, The (Charlottesville) Daily Progress, (op-ed), 08/01/14. Bryan Osborn: As I have written before, back in April, the EPA released a new proposed rule that would amend the definition of "waters of the U.S." and expand federal jurisdiction under the Clean Water Act to not only potentially all waters, but also dry ditches that carry only rain water. American Farm Bureau President Bob Stallman calls this proposed redefinition the "biggest federal land grab, in terms of power over land use, that we have seen to date." Bryant Osborn and his wife Terry own Corvallis Farms in Culpeper County.

Blogs/Social Media

Urge EPA to Revise Proposed WOTUS Rule, Nebraska Corn Blogspot, 08/01/14. The [National Corn Growers Association](#) is urging all farmers to contact EPA Administrator Gina McCarthy advocating for a revision of the proposed Waters of the U.S. rulemaking. As proposed, this rule would significantly expand the jurisdiction of the Clean Water Act and would only further muddy the waters for farmers seeking clarity as to what is and what is not subject to federal regulation.

Congressman Scott Tipton (R-CO) questioned (EPA) Deputy Administrator Bob Perciasepe during a House Small Business Committee hearing on the EPA's controversial new rule to redefine waters of the United States under the Clean Water Act. <https://www.youtube.com/watch?v=CkZC68CbK7w>

Congressman Richard Hanna questions an Environmental Protection Agency official during a July 30 hearing about the Agency's expansion to the Clean Water Act. <http://www.youtube.com/watch?v=0hKFYtpvg24>



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Senate Democrats Challenge Water Rule

By [Philip Brasher/CQ](#)

Thirteen Senate Democrats led by Agriculture Chairwoman Debbie Stabenow of Michigan are raising concerns about the Obama administration's proposal to define the jurisdiction of the Clean Water Act ([PL 95-217](#)) and a separate interpretive rule spelling out agricultural practices that are exempt from permitting requirements. The measures have already been under intense fire from House Republicans and some Democrats.

A [letter](#) sent to the EPA, Army Corps of Engineers and Department of Agriculture on Thursday stops short of calling for the withdrawal of the proposed and interpretive rules, but the senators laid out a series of specific questions directed at both measures but primarily focused on the interpretive rule.

"Given the many uncertainties that remain regarding the effects this rule may have on agriculture, some of which are identified in this letter, we request that you reach out to stakeholders, both small and large, to better understand their concerns as you continue to consider this rule," the senators wrote.

The senators questioned why, for example, the administration is even listing the 56 exempt practices when they already should have been considered exempt: "By carving out a specific exemption for a certain number of conservation practices, an assumption has been created that but for this list, these certain conservation practices would have required a CWA permit. Is this true?" The letter also repeats concerns that the practices would have to be done according to standards set by USDA's Natural Resources Conservation Service, a stipulation the EPA appears to be backing away from.

WATER POLICY:

EPA water office left rudderless by Senate inaction

Nick Juliano and Annie Snider, E&E reporters

Published: Thursday, July 31, 2014

Last November, moments after Senate Democrats triggered a controversial rule change meant to speed confirmation of President Obama's executive branch and judicial nominees, Senate Majority Leader Harry Reid recalled the plight of Ken Kopocis, who was awaiting a vote on whether he would take the reins at U.S.

EPA's water office.

"We have one nominee who deals with making sure the water we drink and the air we breathe is pure. He's been waiting almost 890 days because they don't like that agency. It's that fretful Environmental Protection Agency," Reid said in the Nov. 21 news conference. "It's an undeniable fact that the obstruction we've seen in recent years is something altogether new and very, very different."

Now it's been 1,147 days that Kopocis has been waiting, and still his confirmation seems no closer than it was nine months ago, despite Democrats' decision to trigger the so-called nuclear option.

Meanwhile, the woman he would replace, acting Assistant Administrator Nancy Stoner, announced yesterday that she is leaving the agency to lead the San Francisco-based Pisces Foundation's new water program. Stoner, who has been helming the water office since February 2011 in an acting capacity, hits the statutory limit on the length of time an office can have an unconfirmed leader tomorrow, leaving no one leading the office in either an acting or confirmed position.

Kopocis is just one of several dozen nominees still waiting on a confirmation vote, but his struggle demonstrates the extent to which nominees can fall victim to broader policy fights.

In this case, a vote on Kopocis' nomination -- should one ever happen -- would be portrayed as a proxy for EPA's controversial proposed rule to define which streams and wetlands receive automatic protection under the Clean Water Act. Kopocis has been heavily involved in crafting the rule in his current role as senior adviser at EPA, and he previously served as senior counsel for the House Transportation and Infrastructure Committee at a time when its then-chairman, Jim Oberstar (D-Minn.), attempted to make similar jurisdictional changes legislatively.

Not long after the most recent time Kopocis' nomination was advanced by the Environment and Public Works Committee, on a party-line vote earlier this year, the panel's GOP members circulated a letter to colleagues arguing that "a vote in favor of Mr. Kopocis should be viewed as a clear endorsement of the President's water policy" ([*E&E Daily*](#), March 6).

Even before the rule was formally proposed, at least eight Senate Democrats -- including four of the party's most endangered incumbents fighting for re-election this year -- joined with Republicans in an attempt to block the rule. With Republicans expected to vote against Kopocis en masse, losing those Democrats would be enough to deny a majority.

Senior Democrats blame Republicans for using dilatory procedural tactics to obstruct the nomination because of objections to the water rule.

"We don't seem to be able to move him quickly because the Republicans are being very difficult," said Sen. Barbara Boxer (D-Calif.), the chairwoman of the Environment and Public Works Committee.

Boxer and Sen. Ben Cardin (D-Md.), who is chairman of the EPW Subcommittee on Water and Wildlife, both insisted that Democratic opposition was not holding up the nominee. "I think the votes are there. ... It's the Republicans who are obstructing, not Democrats," Cardin said.

Still, even with GOP delaying tactics, there has been more than enough time to get the nomination to the floor since Reid highlighted it back in November, if sufficient support were there and if doing so were enough of a priority.

GOP aides say a more likely culprit is the difficult position vulnerable Democrats would be forced into if they had to vote on the nomination. While not as prominent as its climate change efforts, EPA's water rule has generated staunch criticism from a variety of industries that would be affected, as well as some states and municipalities, and any show of support could come back to haunt Democrats fighting for re-election in November.

Mary Landrieu, the Louisiana Democrat facing one of the year's toughest races as she attempts to defend her Senate seat, came out immediately against the regulatory proposal when the administration released it in March.

"Today's proposed rule by the EPA represents yet another example of this agency overreaching and stepping outside of its bounds without thought to the economic consequences of its actions," she said in a statement. "This decision lacks common sense and will hamper our nation's efforts to increase domestic energy production, create jobs, reduce our dependence on foreign oil and break the oppressive grip of tyrants and dictators across the globe."

During consideration of the Water Resources Development Act last year, Landrieu was among the eight Democrats who joined Republicans in supporting a failed amendment to block the rule. The other Democrats were Sens. Mark Begich of Alaska, Joe Donnelly of Indiana, Kay Hagan of North Carolina, Heidi Heitkamp of North Dakota, Joe Manchin of West Virginia, Claire McCaskill of Missouri and Mark Pryor of Arkansas. Begich, Hagan and Pryor are also facing re-election in November in races that Republicans have made a high priority in their efforts to retake control of the chamber.

A spokesman for Manchin said he has not had a chance to meet with Kopocis because he does not serve on the EPW Committee and a floor vote has not been scheduled, and, therefore, he has not decided how he would vote. A Heitkamp spokeswoman declined to say how she would vote. The other senators' offices did not respond to requests for comment yesterday.

Rudderless in choppy waters

With Stoner's long-running temporary tenure coming to an end tomorrow and the Senate scheduled to leave town until September at the end of this week, the water office will be rudderless for at least five weeks, if not longer.

The lack of leadership at the top comes at a particularly bad time for the office. EPA Administrator Gina McCarthy herself has acknowledged that the rollout of the water rule has been rocky, particularly for the agricultural community.

And opponents of the rule have had years to draw their battle lines, especially after the agency proposed and then withdrew a less formal version of the current proposal. In the four months since the proposal was unveiled, Congress has held five hearings and one markup just on the water rule, and opponents have raised concerns about it in many more times.

Without a confirmed assistant administrator for water, Deputy EPA Administrator Bob Perciasepe took on the job of defending the rule at many of those hearings ([see related story](#)). Perciasepe, who has strong chops on water issues after leading the agency's water office during the Clinton administration and serving as Maryland Secretary of Environment, has played a key role in explaining the rule not just on Capitol Hill, but also with agricultural and other stakeholder groups.

But Perciasepe, too, is leaving the agency next month to take the helm of the nonprofit Center for Climate and Energy Solutions.

Those who work closely with EPA are quick to point out that the agency has a number of qualified staffers working in the water office.

"They do have a very deep bench of expertise," said Alexandra Dunn, executive director of the Environmental Council of the States. "And the team working on [the water rule] is very strong, so I don't think they will be at a loss to find a leader."

Still, backers of the water rule privately acknowledge that political leadership does matter and worry about

the agency's ability to wage a big battle over the proposal while it is so short-staffed.

But, Cardin argued, the lack of a top leader at the office could also pose a problem for critics of the agency.

"The [water office's] work will be carried out, but you don't have the same accountability, which to me, if you are a critic of the agency, you would want to have somebody accountable," the Maryland Democrat said. "So in a way, I think it works just to the opposite of what opponents are trying to do."